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EDITORIAL

Exposing myths about the number of adoptable children and the need for more precision when defining who is adoptable

Sorting through the myriad of definitions being used and misused to identify the number of adoptable children can be an onerous task and requires clarification for better policy making

Misunderstanding about the number of adoptable children abounds due to different definitions of the same term and various terms such as orphan, unaccompanied or separated children being used interchangeably. This uncertainty creates havoc for policy makers when deciding which children should be targeted and by which

program, resulting in the prevalence of myths, which this editorial seeks to debunk.

Myth 1: There are millions of orphans and all are adoptable

UNICEF has a broad definition of orphan which includes any child who has lost one or both parents and accordingly estimates that

in 2005 there were over 132 million orphans in sub-Saharan Africa, Asia, Latin America and the Caribbean. Of this number “only” 13 million had lost both parents, which according to the UNHCR and many industrialised countries is the definition of an orphan. To avoid confusion ‘double orphan’ for a child who has lost both parents and ‘single orphan’ for those who have lost one parent can be used.

Whether one refers to a double or single orphan, not all orphans are adoptable. UNICEF believes there is clear evidence that ‘the vast majority of orphans are living with a surviving parent, grandparent, or other family member’. Therefore whilst it can be said that there are 13 million orphans, one can not conclude that this entire number is in need of a new family, accommodation or alternative care let alone adoptable. The aim for policy makers should be on supporting the families who are caring for orphans.

Myth 2: There are millions of unaccompanied and separated children and all are adoptable

There is general agreement by UN agencies about the definition of “unaccompanied children” and “separated children” (UASC). Unaccompanied children are those who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so. Whereas separated children are those who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives such as another adult family member.

Whilst there is general agreement about the terms UASC, there can be a false assumption that all UASC are adoptable. The reality is that children become separated from their parents usually for a temporary period and for a number of reasons including the persecution of the child or his parents; international conflict and civil war; natural disaster, trafficking in various contexts and forms, including sale by parents; and the search for better economic opportunities. For example as a result of the Tsunami in 2004, there were 1 709 UASC of which 1 605 were reunited with their immediate families in Thailand.

The main priority during the separation period should be the implementation of procedures for the registration of children, the

identification of their family and temporary placements whilst waiting. If the principle of subsidiarity is respected and solutions that allow the child to stay in his/her own country are given preference; the number of children left for intercountry adoption is therefore limited.

Myth 3: There are millions of children who are in institutions in countries of origin and all are adoptable

About 1.5 million children in the CEE/CIS live in public care. In Europe and Central Asia, over one million children live in residential institutions. There are limited statistics on sub-Saharan Africa, although statistics in 2004 indicate that 7,500 children were in residential facilities in Liberia and 5,000 in Zambia.

Despite this number of children being in institutions, not all children in institutions are adoptable. There can be legal and traditional constraints so that the notion of adoption is practically inexistent in regions such as the sub-Saharan Africa. Moreover many children in institutions are not adoptable because they still have parents, who have not abdicated their parental rights, nor has a court made a judgement of their incapacity or the placement is temporary with a view of being reunited with their family. For example in Russia where there are 750 000 children who have been identified as living in an institution or placed in alternative family care, only 17% were identified as being without parental care.

Even when children are declared adoptable, the reality is that not all these children are available for intercountry adoption, nor should they be if the principle of subsidiarity is to be respected. Developing national solutions for their children, including foster care and national adoptions and the improvement in economic and social conditions in the countries of origins has also created the possibility for middle class families to adopt children.

Myth 4: There are millions of babies waiting to be adopted

The ideal of adopting a baby less than 6 months old and with good health does not reflect current actuality. In reality, there are countries who expressly set a minimum age at which a child may be adopted in an effort to counter various illicit acts (eg: sale of

babies), to ensure that parents relinquishing their children have the opportunity to reconsider their consent and to encourage the adoption of older children based on the realities within the country. For example, the Philippine Inter-country Adoption Board states that the children mostly available for intercountry adoption are older between 5 - 15 years old.

In practice there is also an augmentation in the age of the children who are being adopted as shown the ISS/IRC Monthly bulletin 6-7/2008. Also in the USA, from the 129 000 children adoptable in 2006, 4% of the children were less than 1 year of age and 39% were over 10 years of age.

Another reality is that the many children being adopted have special needs. For example in Italy, in 2007, 6.8% of the children adopted had special needs amounting to 233 children. Of this group, 10.7% had major problems with 89.3% having problems that were reversible. Currently in Latvia, the only children available for adoption are those part sibling groups (3 children or more), older children with more than 10 years; children with disabilities or mental illness.

Conclusion

The ISS/IRC agrees with Cantwell's definition of "adoptable" as referring to a child who is "officially recognised as having a legal status enabling adoption to be considered, and deemed to require and to be potentially able to benefit from such a measure". Moreover in determining whether a child is adoptable there must be regard to social, psychological, medical and legal aspects, as well the

establishment of a fact that the child can not be cared for or reintegrated into their family of origin. Hasty assumptions that orphaned, UASC and children living in institutions are all in need of adoption should therefore be avoided. More objective information should be obtained about the characteristics of children waiting to be adopted in order to ensure a better matching process and successful adoptions. The ISS/IRC encourages complementary reading of the article 'The lie we live' in Foreign Policy Nov/Dec 2008 which provides insightful information about the tragic consequences of actions based on myths.

The ISS/IRC team

Sources: UNCRC General Comment 6

http://www2.ohchr.org/english/bodies/crc/docs/GC6_en.doc, UNICEF fact sheets

<http://www.unicef.org/media/45486.html>

http://www.unicef.org/protection/files/Parental_Care.pdf, Interagency study on UASC

http://www.unicef.org/violencestudy/pdf/IAG_UASCs.pdf, UNHCR Guidelines

<http://www.unhcr.org/refworld/docid/48480c342.html>, Africa's orphaned children

http://www.unicef.org/media/files/AOVB_Report_prepublication_PDF.pdf, Nigel Cantwell,

Intercountry Adoption, International Child Protection Newsletter, Vol 5 2003, Russia

<http://adoptaenrusia.iespana.es/vinculospresa.html>, nd Report Tsunami 3 years later

http://www.unicef.org/media/files/Tsunami_three_year_financial_figures_for_NatComs_final.pdf,

Philippines ICAB

http://www.icab.gov.ph/index.php?option=com_content&task=view&id=13&Itemid=25.

ACTORS IN MATTERS OF ADOPTION

Source: Permanent Bureau of the Hague Conference: http://hcch.e-vision.nl/index_en.php?act=conventions.authorities&cid=69.

- **Belize, Guatemala, Hungary, Latvia and San Marino:** These countries have updated the contact details of its Central Authorities.
- **Sweden:** This country released information about the accreditation of a new adoption body.

IN BRIEF

Colombia: Strike paralyses adoption procedures

Since the beginning of September, a strike by Judges motivated by salary issues has paralysed the Colombian judicial system and prevented foreign adoptive families from obtaining the necessary adoption judgments to ensure that adopted children are authorised to leave the country. The Colombian Institute for the Well Being of the Family is in contact with the French Central

Adoption Authority for intercountry adoptions amongst others with a view of finding solutions for the concerned families.

Sources: French Central Adoption Authority www.diplomatie.gouv.fr/fr/adoption-internationale_2605/index.html; Spanish Centre for Information for the preparation and support of Adoption, *Adoptantis*, Revue N°61, September 2008.

Philippines: Moratorium lifted and applications from single persons now accepted

According to the UK Central Adoption Authority, the moratorium limiting applications from single persons effective from June 2007 has now been lifted. The Philippines Intercountry Adoption Board will now accept applications for single persons for children who are 6 years old and above, have minor correctable medical conditions or come from difficult backgrounds.

Source: UK Department for Children, Schools and Families, <http://www.dcsf.gov.uk/intercountryadoption/#071008>

LEGISLATION

ECHR: Towards the recognition of new forms of adoption without rupturing the ties with the biological parent

The European Court of Human Rights has given two recent judgments in favour of maintaining the ties between the child and his biological parent.

In the case of *X v Croatia* of 17 July 2008 and the case of *Emonet and others v Switzerland* of 13 December 2007, the ECHR made judgments in favour of the demands of the applicants, that there was an interference to their right to have their private and family life respected (article 8 European Convention of Human Rights) as reflected by the decisions of Croatia and Switzerland who did not pursue a legitimate goal that is justifiable.

In the first case, the Court concluded that there was a violation of Article 8 mentioned above due to the exclusion of the applicant in the adoption decision relating to her daughter. The applicant was not seen, nor informed about the adoption decision, nor was she solicited for her consent for the adoption for reasons including that she had lost her parental rights due to her schizophrenic paranoid state. The Court based its decision on the fundamental tie within the family which already existed between the applicant and her daughter.

In the second case, the Court decided that there was also a violation of article 8 mentioned above due to one of the applicants losing her maternal filiation following the

adoption of the child by her partner. The adoption resulted in the suppression of the tie between the adoptee and her mother because the mother was not married to her partner. The Court remarked that the “family” as previewed in Article 8 did not envisage only the relations founded by a marriage but also included other “families”.

The Courts’ decisions are founded on the broader acknowledgement that all adoptions do not lead to a loss in the original filiation which is legally acknowledged in the upcoming revised project of the European Adoption Convention which states that there is not a loss in the original filiation in the case of an adoption by a partner or where there is a registered partnership.

Source: *X v Croatia* of 17 July 2008 <http://cmiskp.echr.coe.int/tkp197/viewhbkm.asp?action=open&table=F69A27FD8FB86142BF01C1166DEA398649&key=71857&sessionId=15091785&skin=hudoc-fr&attachment=true> and *Emonet and others v Switzerland* of 13 December 2007 <http://cmiskp.echr.coe.int/tkp197/viewhbkm.asp?action=open&table=F69A27FD8FB86142BF01C1166DEA398649&key=66936&sessionId=15091665&skin=hudoc-fr&attachment=true>

From theory to practice: best interests of the child in alternative care

The UNHCR has developed a practical tool on how to determine what the best interests of the child are with the aid of a formal process known as a Best Interest Determination in the context of unaccompanied and separated refugee children.

In May 2008, the UNHCR published its final version on Guidelines on Determining the Best Interests of the Child (UNHCR Guidelines) after two years of field testing in Ethiopia, Kenya, Malaysia, Tajikistan, Tanzania and Thailand. Amongst other things, these Guidelines explain how a best interest determination (BID) as a formal process can be carried out before making a decision about the voluntary repatriation, resettlement or local integration of unaccompanied and separated refugee children. These Guidelines are a welcome tool for deciphering in concrete terms what the 'best interests of the child' are in practice, given that the principle often remains an abstract ideal, difficult to define and challenging to implement.

Core principle

In addition to being a core principle of the UN Convention on the Rights Child (Convention), the UN Committee on the Rights of the Child has defined the 'best interests of the child as the general principle guiding interpretation of the entire Convention. The key formulation of the principle is found in article 3 of the Convention which states that 'in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.'

Importantly the Convention goes further in making the best interests of the child *the* primary consideration in terms of separation of the child from their family (art 9), foster care (art 20) and adoption (art 21). Yet in spite of agreement on the best interest principle in theory, there are fewer consensuses about how to identify and determine what the best interests of the child actually are.

Application of the UNHCR Guidelines

The UNHCR Guidelines identifies and examines three specific situations where a BID is necessary, being:

- the identification of durable solutions (eg: family tracing)
- determining the most appropriate temporary care arrangements (eg: refoulement of parents)
- possible separation of the child against his will (eg: severe abuse from a parent).

Despite this limited focus, ISS/IRC believes that the UNHCR Guidelines are applicable not only to refugee children but certain elements can also aid other children who find themselves in need of alternative care due to migration to a third country. As unaccompanied migrants are often left without legal status and protection, the Guidelines should constitute an important source of inspiration when dealing with those cases.

Moreover, the treatment of non accompanied minors as those in need of alternative care is part of the scope of the Draft UN Guidelines for the Appropriate Use and Conditions of Alternative Care for Children (see article 30), which can usefully complement the UNHCR Guidelines.

Accordingly, some BID procedures from the UNHCR Guidelines could arguably be transferable to other contexts, such as alternative care to ascertain what the best interests of the child and is therefore highly relevant for those working in the context of children deprived of their family.

Procedural safeguards and standards

When conducting a BID, it is essential that the basic procedural safeguards are followed including the active participation of the child and relevant experts (eg: community services, welfare experts) with each step of the determination process being systematically documented. The persons responsible for collecting Information should ensure that it includes a verification of the existing information on the child, interviews with the child's network and their views as to the best interests and importantly, the views of the child. Interview guidelines and methods for collecting evidence are included in the Guidelines.

The persons involved in the process and their respective roles

Specific roles need to be identified such as a supervisor for the entire BID process and person who will collect the information. A BID panel as a decision making body should also be established and include groups such as NGOs with child specific mandates, community experts and local welfare bodies. A BID panel for adoptions would ideally be composed of a multi-disciplinary team with a social worker, psychologist and others in order to make the final matching proposal.

Balancing all relevant factors to determine the best interests of the child

In determining the best interests of the child, there needs to be a consideration of all of the child's rights within the Convention which are interdependent and indivisible, as well as the short and long term impact of the decision. The UNHCR Guidelines encourage decision makers to take into account potential manipulation of child's views and conflicting interests within the child's network with the safety of the child remaining a priority amongst other things.

Informing the child

The final decision should not come as a surprise to the children if they have actively participated in the decision making process. Nevertheless the child's response may vary from contentment to opposition. The child welfare officer must therefore anticipate various ways to implement the decision in a manner that keeps the child informed about his/her situation and future.

Final Observations

The ISS/IRC welcomes the efforts of the UNHCR in developing Guidelines on Determining the Best Interests of the Child and is particularly pleased to see its emphasis on including the views of the child at each

stage of the process. In addition to the information provided in this article, the Guidelines also address important issues such as conflicting interests amongst the child, other children and the community, reopening of a BID case and how to keep records. The checklists for welfare officers and supervisors and BID report included in the annexes also provide useful practical tools for workers on the ground. The ISS/IRC looks forward to seeing the fruits of this timely practical tool on how to determine what the best interests of the child are.

Sources: Lecture by Thomas Hammarberg *The Best Interests of the Child*, 30 May 2008 Warsaw <https://wcd.coe.int/ViewDoc.jsp?id=1303979&Site=CoommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679> & UNHCR Guidelines on Determining Best Interests <http://www.unhcr.org/refworld/docid/48480c342.html>

READING SUGGESTIONS



Ten Top Tips for Placing Siblings, Hedi Argent, BAAF, 2008. This publication is the fourth title in BAAF's *Ten Top Tips series* which tackles some fundamental topics in adoption and fostering with the aim of presenting them in a quick reference format. This book explores the different, often conflicting, principles involved in placing sibling groups. Each of the ten chapters presents a basic "tip" in an accessible and straightforward style, including listening to children about their sibling relationships, placing siblings with friends and family, helping unrelated children to become brothers and sisters, and ensuring that parted brothers and sisters can share their lives. This practical guide will be particularly useful for newly qualified social workers and experienced practitioners as a quick reference tool and a prompt for further thought and exploration. For more information: www.baaf.org.uk.

The ISS/IRC has published a study on the adoption of older children

The document presents an evaluation of the state of these adoptions and highlights the principles that are to be respected to ensure the best possible chance of success.

All the indicators show it: inter-country adoption entails living years with acute tensions. The study of the adoption of older children, published recently by the ISS/IRC* enters into this difficult context characterised by a lack of stability between the needs of adoptable children and the wishes of adoptive applicants. As is often pointed out in this Bulletin, healthy babies always have less difficulty finding a family or a solution to an adequate provision of care in their country of origin. On the other hand, older children, like other children with special needs (ill or disabled children, sibling groups, etc), still find it difficult to be cared for within their community and many of them are waiting for inter-country adoption. Unfortunately, in the case of receiving countries, the adoptive applicants are not yet sufficient in number, and not always sufficiently ready to envisage the adoption of a child other than a healthy baby, whom they dream of as the answer to their needs.

The situation becomes paradoxical: on the one hand, there are countless children with special needs, of whom many are older children, are in institutions or in a foster family and are waiting to be adopted; on the other hand, a growing number of prospective adoptive parents desperately waits to adopt a child.

Theoretical and practical contributions

The ISS/IRC study on the Adoption of Older Children aims to give priority to meeting the needs of older children and the expectations of the adoption applicants. From this point of view, the document of some 40 pages provides an assessment of the state of such adoptions and highlights the principles that need to be respected in order to ensure the best possible chances of a successful adoption. The ISS/IRC has, moreover, based its research on various practices by canvassing the ideas of numerous experts and members of its network. A review of several publications in English and French on the question of adoption of older children has also been undertaken.

In concrete terms, after defining the notion of older children, the document sheds light on the current situation of different countries in terms of statistics and practices. It then goes on to describe the specificities of the process of adopting older children at their different stages, that is to say, the decision on the child's adoptability, the selection of prospective adoptive parents, the matching, the preparation of the children, the parents and the foster family, their first meeting and the process of integrating the child in his family and social environment as well as his school surroundings. Another section, presents the specific follow-up necessary for the new family after the adoption of an older child. A final section provides an assessment of the results of the adoption of these children.

A comparable rate of success for the adoption of older children to that of younger ones

At the end of its analysis, the ISS/IRC study concludes that the adoption of older children succeeds, on average, no less well off than the adoption of babies, on the condition that these children and their adoptive family are prepared and accompanied. However, it's true that their integration into their new family, social and school environment seems a little slower and convoluted than that of their younger peers. Bonding and behavioural difficulties may in particular manifest themselves during the first months after their arrival. But very often, these shortcomings disappear once the child has fully been integrated into his environment. Unfortunately, the possibility of these difficulties seems to create enough fear in certain applicants to dissuade them. Consequently, it becomes a matter of urgency to show that the adoption of older children, if it is correctly carried out and adequately supported, is possible, desirable and often turns out very well.

* The study can be ordered for 15€ with postage and handling included by email via: circulars-irc@iss-ssi.org

FORTHCOMING CONFERENCES, SEMINARS, SYMPOSIA AND COURSES

Spain: *La corresponsabilidad en Adopción Internacional en el marco de la Ley 54/07 de 28 diciembre* (The co-responsibility in International Adoption in the framework of Law 54/07 of 28 December) 17-18 December 2008, Barcelona. English and Catalan translation is available. For more information, contact the Ministry of Education, Social Policy and Sport, Director General of the family and child www.mepsyd.es/politica-social/familias-infancia/adopciones.html.

France: a) *Les séparations en pouponnière: l'arrivée et le départ d'un enfant*, Association Pikler Lóczy de France (Separation in the crèche: the arrival and depart of the child) 8-10 December 2008, Paris. This 3 day course covers amongst others, themes of prevention and the how to treat the separation of the child when he arrives in the crèche and the moment he leaves to return to his family or is placed in a foster family. For more information: Association Pikler Lóczy- France, www.pikler.fr, pikler-loczy@wanadoo.fr, tel: + 33 (0)1 53 68 93 50. b) *Le secret dans la construction de l'enfant: du jardin secret aux secrets en héritage...* (The secret construction of a child: from the secret garden to other secret legacies), COPEs, 26-28 November 2008 and 15-17 December 2008, Paris. This course treats psychological and juridical aspects of secrets and covers predominantly the following themes: ignoring origins, sentiments relating to identity, belonging, the impact of the secret on physical development, legal texts aimed at reversing the secret etc. For more information: COPEs, www.lecopes.org, E-mail: copes-formation@wanadoo.fr, tel: +33 (0)1 53 68 93 40.

United Kingdom: a) *Mixed Heritage Voices: towards a deeper understanding of 'mixedness'*, BAAF, 2 December 2008, London. The aims of the seminar are amongst others to understand the experience of mixed heritage families, the support they might need, identify how adopters and foster carers might use these specific understandings in parenting the mixed heritage child and how practitioners and professionals can implement them in their work. For more information: BAAF, www.baaf.org.uk/res/training/details/081202_se.pdf. Email: conferences@baaf.org.uk, tel: + 44 020 7421 2649. b) *Post-Adoption contact: the way forward*, BAAF, 4 December 2008, London. The seminar will look at recent research on post-adoption contact between adoptees/adoptive families and birth families, as well as the broader issue of openness within adoptive families. It will bring together specialists in this area. Workshops will include the views of adoptive parents and adopted young people and look at the professional challenges and opportunities of post-adoption contact today. Closing date for booking: 21 November 2008. For more information: BAAF, www.baaf.org.uk/res/training/details/081204_se_conf.shtml. Email: conferences@baaf.org.uk, tel: + 44 020 7421 2649.

As a reminder, this Monthly Review is distributed to a selected network of Authorities and professionals. It is not aimed at being posted on an internet website without the authorisation of ISS/IRC.

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www.iss-ssi.org/Resource_Centre/Resource_Center_EN/About_ISS-IRC/about_iss-irc.html. See Activities.

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